U.S. Department of Homeland Security
20 Mass, N.W. Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

BC

[redacted]

FILE: [redacted] Office: VERMONT SERVICE CENTER Date: MAR 03 2006

EAC 03 018 56368

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant petition for Alien Worker as a Skilled Worker or Professional pursuant to section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The immigrant visa petition was denied by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The petition will be summarily dismissed.

The petitioner is a hotel/restaurant. It seeks to employ the beneficiary permanently in the United States as a cook. As required by statute, the petition is accompanied by a Form ETA 750, Application for Alien Employment Certification, approved by the U. S. Department of Labor. On January 5, 2004, the director denied the petition based upon the determination of the United States Citizenship and Immigration Services (CIS) that the beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen and denied the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

On appeal, counsel submits no brief and no additional evidence.

Counsel submitted a Form I-290B appeal in this matter. In the section reserved for the basis of the appeal, counsel states that.

> The Center Director arbitrarily denied the I-140 petition filed by the Bernards Inn without first issuing an intent to deny and affording both the petitioner and the beneficiary an opportunity to respond and to submit rebuttal evidence.[1] Therefore, the denial should be vacated and remanded for further consideration.

As is evident from the above statement upon appeal, the petitioner and the beneficiary have not explicitly denied the finding of the director that the beneficiary entered into a fraudulent marriage to a United States citizen.

The Section 204(c) of the Act states:

> Notwithstanding the provisions of subsection (b) no petition shall be approved if (1) the alien has previously been accorded, or has sought to be accorded, an immediate relative or preference status as the spouse of a citizen of the United States or the spouse of an alien lawfully admitted for permanent residence, by reason of a marriage determined by the Attorney General to have been entered into for the purpose of evading the immigration laws or (2) the Attorney General has determined that the alien has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws.

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[1] There is no regulatory requirement for CIS to issue such a request. When petitions on their face, do or do not demonstrate eligibility for the preference visa classification sought, the director may review and act upon the petition as submitted. *See* CIS Interoffice Memorandum (HQOPRD 90/16.45) dated May 4, 2004. In this instance, the validity of the beneficiary's marriage to a United States citizen was the subject of a prior employment based preference visa process in which the beneficiary was apprised of the prior investigative findings leading to the denial of the petition. The prior marriage based petition was denied according to the regulation 8 C.F.R. § 204.2(a)(1)(ii). Further, as this present appeal demonstrates, the petitioner may introduce additional evidence and introduce case precedent in support of its position in a *de novo* review.

The regulation 8 C.F.R. § 204.2(a)(1)(ii) states in pertinent part:

> *Fraudulent marriage prohibition.* Section 1040 of the Act prohibits the approval of a visa petition filed on behalf of an alien who has attempted or conspired to enter into a marriage for the purpose of evading the immigration laws. The Director will deny a petition for immigrant visa classification filed on behalf of any alien whom there is substantial and probative evidence of such an attempt or conspiracy, regardless of whether that alien received a benefit through the attempt or conspiracy. Although it is not necessary that the alien have been convicted of, or even prosecuted for, the attempt or conspiracy, the evidence of the attempt or conspiracy must be contained in the alien's file.

Matter of Tawfik, 20 I&N Dec. 166 (BIA 1990) involved a case in which the a determination was made by CIS that the beneficiary's prior marriage came within the purview of Section 204(c) of the Act. According to *Tawfik* the director must reach an independent conclusion of marriage fraud and that relevant evidence may be relied upon which can be prior CIS proceedings that involve the beneficiary and the prior marriage. The beneficiary in a separate proceeding involving a marriage based petition was found to have entered into a sham marriage within the ambit of section 204(c) of the Act. That information is contained within the record of proceeding in this matter and it was available to the director in making his present determination.

Further, the present employment based immigrant petition proceeding is the second such petition by the same petitioner for the subject beneficiary. The first employment based immigrant petition (reference file receipt number EAC 00 002 52798) was approved on May 16, 2000. It was found that the beneficiary had failed to disclose a marriage based petition filed by the beneficiary's putative United States citizen spouse on November 24, 1995. In that proceeding it was found by CIS that the beneficiary (reference Alien number A [redacted] had divorced his United States citizen wife, and then remarried his first wife. The marriage based petition was denied.

Therefore, a decision to revoke the approved employment based immigrant petition was issued October 2, 2001, based upon the finding that the beneficiary entered into a marriage for the purposes of evading the immigration laws. The petitioner appealed the revocation, which appeal was dismissed on September 19, 2002.

All the above mentioned petition proceedings information is contained within the record of proceeding in this matter and it was available to the director in making his present determination.

The beneficiary is ineligible for the classification sought based on the beneficiary's fraudulent marriage to a United States citizen and denied the petition pursuant to section 204(c) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1154(c).

Counsel's statement on appeal contains no specific assignment of error. Alleging that the director erred in some unspecified way is an insufficient basis for an appeal.

8 C.F.R. § 103.3(a)(1)(v) states, in pertinent part: "An officer to whom an appeal is taken shall summarily dismiss any appeal when the party concerned fails to identify specifically any erroneous conclusion of law or statement of fact for the appeal."

Counsel has failed to identify specifically an erroneous conclusion of law or a statement of fact as a basis for the appeal and the appeal must be summarily dismissed.

ORDER: The petition is summarily dismissed.